

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TESSA G.,

Plaintiff,

v.

XAVIER BECERRA, *Secretary, United
States Department of Health and
Human Services,*

Defendant.

CIVIL ACTION NO.
1:23-cv-02665-LMM-RGV

ORDER

This case is before the Court on Plaintiff's Objection [5] to the Magistrate Judge's Order [4] denying Plaintiff's Motion to File Complaint and Associated Pleadings and Submissions Using Alias [2]. After due consideration, the Court enters the following Order:

I. LEGAL STANDARD

Under 28 U.S.C. § 636(b)(1)(A), the Magistrate Judge has the authority to hear any non-dispositive pretrial matter, and the Court may reconsider the Magistrate Judge's Order on such matter only where it has been shown that it is clearly erroneous or contrary to law. Eason v. Citimortgage, Inc., No. 1:16-cv-4247, 2017 WL 783204, at *2 (N.D. Ga. Mar. 1, 2017) (quoting 28 U.S.C.

§ 636(b)(1)(A)); see also Rothe v. Aballí, No. 20-12543, 2021 WL 4429814, at *2 (11th Cir. Sept. 27, 2021) (noting that non-dispositive matters are set aside only if clearly erroneous or contrary to law); Fed. R. Civ. P. 72(a) (same).

II. DISCUSSION

In this disability discrimination action, the Magistrate Judge denied Plaintiff's motion to file her complaint and pleadings under the alias "Tessa G." Dkt. No. [4]. Specifically, the Magistrate Judge determined that Plaintiff had not overcome Federal Rule of Civil Procedure 10's strong presumption in favor of parties proceeding in their own names. Id. While Rule 10(a) generally requires a plaintiff to include the names of all parties in a complaint, the rule is not absolute, and, in exceptional cases, a party may proceed under a fictitious name. Doe v. Sheely, 781 F. App'x 972, 973 (11th Cir. 2019). In determining whether a party may proceed under a pseudonym, courts consider:

(1) whether the party challenges government activity, (2) whether the party will be required to disclose information of the utmost intimacy, (3) whether the party will be coerced into admitting illegal conduct or the intent to commit illegal conduct, thereby risking criminal prosecution, (4) whether the party is a minor, (5) whether the party will be exposed to physical violence should he or she proceed in their own name, and (6) whether proceeding anonymously poses a unique threat of fundamental unfairness to the defendant.

Doe v. Sheely, No. 3:18-cv-122, 2019 WL 11505836, at *1 (N.D. Ga. Feb. 25, 2019) (cleaned up); see also Sheely, 781 F. App'x at 973. Here, the Magistrate Judge determined that the first factor weighed in Plaintiff's favor but that no other factors justified fictitious pleading. Dkt. No. [4].

Plaintiff asks the Court to reconsider the Magistrate Judge’s finding, arguing that the Magistrate Judge incorrectly weighed the totality of the circumstances and the above six factors by minimizing the stigma associated with epilepsy, her medical condition.¹ Dkt. No. [5]. The Court first addresses the most important factor in this case: whether Plaintiff’s disclosure of her name would require her to disclose information of the utmost intimacy. The Court next addresses the other five factors identified by the Magistrate Judge.

First, the Magistrate Judge’s decision that the “utmost intimacy” factor weighed against Plaintiff was not clearly erroneous. Plaintiff argues otherwise, citing cases that reference the stigma of mental health conditions and sexually transmitted diseases. *Id.* at 11–16. However, these cases do not directly address whether the stigma associated with epilepsy, a common medical condition, is sufficient to warrant anonymity. *See Doe v. Frank*, 951 F.2d 320, 323–24 (11th Cir. 1992) (finding that stigma associated with the plaintiff’s alcoholism did not justify fictitious pleading); *Doe v. DeKalb Cnty. Sch. Dist.*, 145 F.3d 1441, 1443 n.1 (11th Cir. 1998) (noting in dicta that the plaintiff—who was infected with HIV—was proceeding under a pseudonym); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 588 (1999) (describing the plaintiffs, who proceeded under a pseudonym, as

¹ Plaintiff also complains that the Magistrate Judge should have applied the totality of the circumstances approach described in *Doe v. Neverson*, 820 F. App’x 984, 986 (11th Cir. 2020). But the Magistrate Judge appears to have done so, and, other than general empirical evidence about stigma associated with epilepsy, Plaintiff does not point to any factual circumstances that the Magistrate Judge omitted in his analysis. Thus, the Court disagrees with Plaintiff that the Magistrate Judge applied the incorrect legal standard.

people with mental disabilities). Thus, these cases do not show that the Magistrate Judge’s decision was clearly erroneous or contrary to law.

Plaintiff also contends that the Magistrate Judge minimized the serious social stigma associated with her condition. Dkt. No. [5] at 8–10, 14–18. Plaintiff cites empirical research and legal history describing such stigma. *Id.* at 8–10. Although the Court is mindful of the stigma associated with epilepsy, courts have generally required plaintiffs to disclose even sensitive medical and mental health conditions in disability discrimination cases. *See, e.g., Frank*, 951 F.2d at 324 (rejecting the plaintiff’s argument that alcoholism was information of the utmost intimacy); *Doe v. Garland*, 341 F.R.D. 116, 118 (S.D. Ga. 2021) (rejecting the plaintiff’s argument that his attention deficit disorder was information of the utmost intimacy). And while the Eleventh Circuit has suggested that a plaintiff’s sexuality, gender identity, or severe mental health condition may qualify as highly sensitive information justifying anonymity,² Plaintiff points to no case law classifying a plaintiff’s disclosure of epilepsy as information of the “utmost intimacy.” Thus, the Court finds that the Magistrate Judge’s decision on this factor was not clearly erroneous or contrary to law.

Second, the Magistrate Judge did not err in finding that the other five factors mostly weighed against Plaintiff. With respect to the first factor, the

² *See Frank*, 951 F.2d at 324 (summarizing case law); *see also Sheely*, 781 F. App’x at 972–74 (finding fictitious pleading justified where the plaintiff was sexually abused in jail); *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 685–87 (11th Cir. 2001) (allowing fictitious pleading where the plaintiff received an abortion).

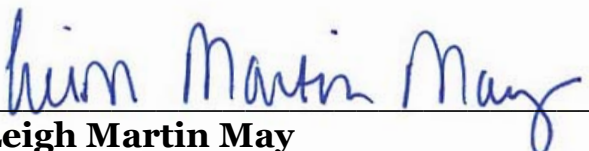
Magistrate Judge acknowledged that Plaintiff is challenging government action but correctly determined that this factor alone is not sufficient to justify fictitious pleading. See Garland, 341 F.R.D. at 118 (noting that the Eleventh Circuit has not found this factor “particularly persuasive, let alone dispositive” (citing Frank, 951 F.2d at 323–24)). Plaintiff has conceded that the next factor—whether she would be required to disclose illegal conduct—does not apply here. Dkt. No. [5] at 14. Plaintiff also is not a minor and has not shown why disclosure of her name could expose her to a physical threat or violence.

The Magistrate Judge found that the record was unclear as to the final remaining factor—whether proceeding anonymously poses a unique threat of fundamental unfairness to the defendant. Dkt. No. [4] at 12 n.4. Plaintiff points out that Defendant already knows her identity, meaning that Defendant could suffer no prejudice from her proceeding under a pseudonym. Id. at 17–18. Even so, this factor demonstrates only that Defendant’s circumstances do not weigh against Plaintiff’s privacy interests—it does *not* constitute an affirmative reason for Plaintiff’s interests to override the presumption of openness. Thus, the Court agrees with the Magistrate Judge that four of the six factors weigh against Plaintiff’s position and that, considering the totality of the circumstances, Plaintiff has not overcome Federal Rule of Civil Procedure 10’s presumption of openness. The Magistrate Judge’s findings were therefore not clearly erroneous or contrary to law, and the Court overrules Plaintiff’s objection.

III. CONCLUSION

In accordance with the foregoing, the Court **OVERRULES** Plaintiff's Objection [5] to the Magistrate Judge's Order [4]. Plaintiff is directed to comply with the Magistrate Judge's Order [4]. The Clerk is **DIRECTED** to refer this matter to the Magistrate Judge for further proceedings.

IT IS SO ORDERED this 24th day of April, 2024.


Leigh Martin May
United States District Judge